

REMARKS

In the present Office Action, claims 1-23 were pending before the Office. Of these, claims 1, 12, and 23 were the only independent claims.

Claims 1-7, 11, 12-18, 22, and 23 were rejected under 35 U.S.C. § 102(b). Claims 8-10 and 19-21 were rejected under 35 U.S.C. § 103(a).

No claims are hereby added, amended, canceled, or withdrawn.

A. THE CLAIM REJECTION UNDER 35 U.S.C. § 102 IS CLEARLY NOT PROPER AND IS WITHOUT BASIS AS THE REJECTION EFFECTIVELY IGNORES THE EXPRESS CLAIM LANGUAGE "A PLURALITY OF DATA TYPES"

Claims 1-7, 11, 12-18, 22, and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,098,123 to Olnowich [hereinafter *Olnowich*]. Applicant respectfully traverses this rejection.

Independent claim 1 recites, inter alia:

determining an amount of memory bandwidth of a network processor used by a plurality of data types to transmit data through a plurality of active ports[.]

Independent claims 12 and 23, which each have their own scope, recite similar features.

Applicant respectfully submits that the rejection is clearly not proper and is without basis. Specifically, it is submitted that the cited passages of *Olnowich* fail to disclose at least the above features for at least the reasons set forth herein. Accordingly, Applicant respectfully submits that a prima facie case of anticipation has not been established.

The cited passages of *Olnowich* (col. 1, lines 30-36 and FIG. 5) fail to disclose a plurality of data types. To find

otherwise would be to completely remove any meaning whatsoever from the express claim term "types".

The Office Action points to four (4) ports discussed in the cited passages of *Olnowich* for disclosing four different types of data. Specifically, the Office Action contends:

port A and port B are used to transmit data
to and from processor 4; port C and port D
are used to transmit data to and from network
2 - hence four different data types through
ports A, B, C, D (col. 1, lines 30-36; FIG.
5)

However, neither the function of a port (send/receive) nor the destination of its data (processor/network) equate to "a plurality of data types." That is, these passages have not been shown to disclose anything other than one type of data being transmitted using four (4) different ports.

Applicant respectfully notes that the burden is on the Office, not the Applicant, to establish a prima face case. In this instance, the burden is on the Office to establish that ports A-D transmit more than one type of data.

Applicant respectfully submits that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 102 are respectfully requested.

B. THE CLAIM REJECTION UNDER 35 U.S.C. § 103 IS CLEARLY NOT PROPER AND IS CLEARLY WITHOUT BASIS AS NO SECONDARY CITATION IS OFFERED THAT WOULD REMEDY THE ABOVE DEFICIENCY OF THE REJECTION OF THE INDEPENDENT CLAIMS

Claims 8-10 and 19-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Olnowich*. Applicant respectfully traverses this rejection.

As discussed above, the cited passages of *Olnowich* fail to disclose all of the features recited in independent claims 1 and 12, from which claims 8-10 and 19-21 ultimately depend.

Applicant respectfully submits that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 are respectfully requested.

C. CONCLUSION

Since Applicant asserts that all the independent claims are in condition for allowance and all remaining claims properly depend from the independent claims, Applicant asserts that all claims are allowable.

Applicant does not believe a request for extension of time is required but if it is, please accept this paragraph as a request for an extension of time and authorization to charge the requisite extension fee to Deposit Account No. 04-1696.

Applicant does not believe any additional fees are due regarding this amendment. However, if any additional fees are required, please charge Deposit Account No. 04-1696.

Respectfully Submitted,

Dated: January 13, 2009

A handwritten signature in black ink, appearing to read 'Christopher Paul Mitchell', with a stylized flourish at the end.

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